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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 **Scott Johnson,**

16 Plaintiff,

17 v.

18 **Leung Yee Enterprise, Inc.**, a
19 California Corporation;
20 **Healthy Food Corp.**, a California
21 Corporation; and Does 1-10,

22 Defendants.

23 **Case No.**

24 **Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

25 Plaintiff Scott Johnson complains of Leung Yee Enterprise, Inc., a
26 California Corporation; Healthy Food Corp., a California Corporation; and
27 Does 1-10 ("Defendants"), and alleges as follows:
28

29 **PARTIES:**

30 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
31 level C-5 quadriplegic. He cannot walk and also has significant manual
32 dexterity impairments. He uses a wheelchair for mobility and has a specially
33 equipped van.

1 2. Defendant Leung Yee Enterprise, Inc. owned the real property located
2 at or about 2090 N. Capitol Avenue, San Jose, California, in May 2018.

3 3. Defendant Leung Yee Enterprise, Inc. owned the real property located
4 at or about 2090 N. Capitol Avenue, San Jose, California, in December 2018.

5 4. Defendant Leung Yee Enterprise, Inc. owns the real property located at
6 or about 2090 N. Capitol Avenue, San Jose, California, currently.

7 5. Defendant Healthy Food Corp. owned Subway located at or about 2090
8 N. Capitol Avenue, San Jose, California, in May 2018.

9 6. Defendant Healthy Food Corp. owned Subway located at or about 2090
10 N. Capitol Avenue, San Jose, California, in December 2018.

11 7. Defendant Healthy Food Corp. owns Subway (“Restaurant”) located at
12 or about 2090 N. Capitol Avenue, San Jose, California, currently.

13 8. Plaintiff does not know the true names of Defendants, their business
14 capacities, their ownership connection to the property and business, or their
15 relative responsibilities in causing the access violations herein complained of,
16 and alleges a joint venture and common enterprise by all such Defendants.
17 Plaintiff is informed and believes that each of the Defendants herein,
18 including Does 1 through 10, inclusive, is responsible in some capacity for the
19 events herein alleged, or is a necessary party for obtaining appropriate relief.
20 Plaintiff will seek leave to amend when the true names, capacities,
21 connections, and responsibilities of the Defendants and Does 1 through 10,
22 inclusive, are ascertained.

23

24 **JURISDICTION & VENUE:**

25 9. The Court has subject matter jurisdiction over the action pursuant to 28
26 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
27 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

28 10. Pursuant to supplemental jurisdiction, an attendant and related cause

1 of action, arising from the same nucleus of operative facts and arising out of
2 the same transactions, is also brought under California's Unruh Civil Rights
3 Act, which act expressly incorporates the Americans with Disabilities Act.

4 11. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
5 founded on the fact that the real property which is the subject of this action is
6 located in this district and that Plaintiff's cause of action arose in this district.
7

8 **FACTUAL ALLEGATIONS:**

9 12. Plaintiff went to Restaurant in May 2018 (twice) and December 2018
10 with the intention to avail himself of its goods or services, motivated in part to
11 determine if the defendants comply with the disability access laws.

12 13. The Restaurant is a facility open to the public, a place of public
13 accommodation, and a business establishment.

14 15. Parking spaces are one of the facilities, privileges, and advantages
15 offered by Defendants to patrons of the Restaurant.

16 16. Even though there was a parking space marked and reserved for persons
17 with disabilities in the parking lot serving the Restaurant during Plaintiff's
18 visits, the van parking stall and access aisle were not level with each other
19 because there was a built up curb ramp running into the access aisle.

20 17. This curb ramp caused slopes greater than 2.1%.

21 18. Currently, the van parking stall and access aisle are not level with each
22 other.

23 19. While there are other parking spaces reserved for persons with
24 disabilities in the shopping center, those spaces do not serve the Restaurant.
25 The plaintiff would have to travel with vehicles in the vehicular drive path or
26 travel behind cars.

27 20. Entrance into the Restaurant is another one of the facilities, privileges,
28 and advantages offered by Defendants to patrons of the Restaurant.

1 20. The entrance door hardware at the Restaurant had a panel style handle
2 that required tight grasping to operate during plaintiff's visits.

3 21. Currently, the entrance door hardware at the Restaurant has a panel
4 style handle that requires tight grasping to operate.

5 22. Defendants have failed to maintain in operable working condition those
6 features of facilities and equipment that are required to be readily accessible to
7 and usable by persons with disabilities at the Subject Property.

8 23. Plaintiff personally encountered these barriers.

9 24. This inaccessible facility denied the plaintiff full and equal access and
10 caused him difficulty.

11 25. The defendants have failed to maintain in working and useable
12 conditions those features required to provide ready access to persons with
13 disabilities.

14 26. The barriers identified above are easily removed without much
15 difficulty or expense. They are the types of barriers identified by the
16 Department of Justice as presumably readily achievable to remove and, in fact,
17 these barriers are readily achievable to remove. Moreover, there are numerous
18 alternative accommodations that could be made to provide a greater level of
19 access if complete removal were not achievable.

20 27. For example, there are numerous paint/stripe companies that will come
21 and stripe level parking stall and access aisle and install proper signage on
22 rapid notice, with very modest expense, sometimes as low as \$300 in full
23 compliance with federal and state access standards.

24 28. The barriers in this complaint are easily fixable. For example, replacing
25 door hardware with accessible hardware is a simple and inexpensive task that
26 can be completed without the need to hire a professional.

27 29. Plaintiff will return to the Restaurant to avail himself of its goods or
28 services and to determine compliance with the disability access laws. He is

1 currently deterred from doing so because of his knowledge of the existing
2 barriers. If the barriers are not removed, the plaintiff will face unlawful and
3 discriminatory barriers again.

4 30. Given the obvious and blatant nature of the barriers and violations
5 alleged herein, the plaintiff alleges, on information and belief, that there are
6 other violations and barriers on the site that relate to his disability. Plaintiff will
7 amend the complaint, to provide proper notice regarding the scope of this
8 lawsuit, once he conducts a site inspection. However, please be on notice that
9 the plaintiff seeks to have all barriers related to his disability remedied. See
10 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
11 encounters one barrier at a site, he can sue to have all barriers that relate to his
12 disability removed regardless of whether he personally encountered them).

13

14 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
15 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
16 Defendants.) (42 U.S.C. section 12101, et seq.)

17 31. Plaintiff re-pleads and incorporates by reference, as if fully set forth
18 again herein, the allegations contained in all prior paragraphs of this
19 complaint.

20 32. Under the ADA, it is an act of discrimination to fail to ensure that the
21 privileges, advantages, accommodations, facilities, goods and services of any
22 place of public accommodation is offered on a full and equal basis by anyone
23 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
24 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 25 a. A failure to make reasonable modifications in policies, practices,
26 or procedures, when such modifications are necessary to afford
27 goods, services, facilities, privileges, advantages, or
28 accommodations to individuals with disabilities, unless the

1 accommodation would work a fundamental alteration of those
2 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 b. A failure to remove architectural barriers where such removal is
4 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
5 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
6 Appendix “D.”

7 c. A failure to make alterations in such a manner that, to the
8 maximum extent feasible, the altered portions of the facility are
9 readily accessible to and usable by individuals with disabilities,
10 including individuals who use wheelchairs or to ensure that, to the
11 maximum extent feasible, the path of travel to the altered area and
12 the bathrooms, telephones, and drinking fountains serving the
13 altered area, are readily accessible to and usable by individuals
14 with disabilities. 42 U.S.C. § 12183(a)(2).

15 33. Under the 2010 Standards, access aisles shall be at the same level as the
16 parking spaces they serve. Changes in level are not permitted. 2010 Standards
17 502.4. “Access aisle are required to be nearly level in all directions to provide
18 a surface for wheelchair transfer to and from vehicles.” 2010 Standards §
19 502.4 Advisory. Specifically, built up curb ramps are not permitted to project
20 into access aisles and parking spaces. *Id.* No more than a 1:48 slope is
21 permitted. 2010 Standards § 502.4.

22 34. Here, the failure to provide level parking is a violation of the law.

23 35. Under the ADA, there must be at least one accessible route connecting
24 every building on the same site. 2010 Standards § 206.2.2. Travel in the
25 vehicular drive path and behind vehicles is not part of an accessible route.

26 36. Here, the failure to provide an accessible route is a violation of the law.

27 37. Door hardware must have a shape that is easy to grasp with one hand
28 and does not require tight grasping, tight pinching, or twisting of the wrist to

1 operate. 2010 Standards § 404.2.7.

2 38. Here, the failure to provide such door hardware is a violation of the ADA.

3 39. The Safe Harbor provisions of the 2010 Standards are not applicable
4 here because the conditions challenged in this lawsuit do not comply with the
5 1991 Standards.

6 40. A public accommodation must maintain in operable working condition
7 those features of its facilities and equipment that are required to be readily
8 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

9 41. Here, the failure to ensure that the accessible facilities were available
10 and ready to be used by the plaintiff is a violation of the law.

11

**12 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
13 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
14 Code § 51-53.)**

15 42. Plaintiff repleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
18 that persons with disabilities are entitled to full and equal accommodations,
19 advantages, facilities, privileges, or services in all business establishment of
20 every kind whatsoever within the jurisdiction of the State of California. Cal.
21 Civ. Code § 51(b).

22 43. The Unruh Act provides that a violation of the ADA is a violation of the
23 Unruh Act. Cal. Civ. Code, § 51(f).

24 44. Defendants’ acts and omissions, as herein alleged, have violated the
25 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
26 rights to full and equal use of the accommodations, advantages, facilities,
27 privileges, or services offered.

28 45. Because the violation of the Unruh Civil Rights Act resulted in difficulty,

1 discomfort or embarrassment for the plaintiff, the defendants are also each
2 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
3 (c).)

4 46. Although the plaintiff was markedly frustrated by facing discriminatory
5 barriers, even manifesting itself with minor and fleeting physical symptoms,
6 the plaintiff does not value this very modest physical personal injury greater
7 than the amount of the statutory damages.

8

9 **PRAYER:**

10 Wherefore, Plaintiff prays that this Court award damages and provide
11 relief as follows:

12 1. For injunctive relief, compelling Defendants to comply with the
13 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
14 plaintiff is not invoking section 55 of the California Civil Code and is not
15 seeking injunctive relief under the Disabled Persons Act at all.

16 2. Damages under the Unruh Civil Rights Act, which provides for actual
17 damages and a statutory minimum of \$4,000 for each offense.

18 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
19 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

20 Dated: January 23, 2019

CENTER FOR DISABILITY ACCESS

21 By: 

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25 Chris Carson, Esq.
26 Attorney for plaintiff
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